

## **COLLECTIVE BARGAINING CASES BEFORE BOARD OF PERSONNEL APPEALS – 1992-2000**

### **UNFAIR LABOR PRACTICE CASES**

**ULP Charge No. 7-91**, Mona Sisk and Laurel Classified Employees Association, MEA/NEA, Complainants vs. Laurel Public School, Yellowstone County School District No. 7 & 7-70, Defendant.

Final Board Order issued December 2, 1992 – Board members Poore, Kapinos, Schneckloth, O’Neil and Klepper.

Attorneys: Emilie Loring for Complainants; Rick D’Hooze for Defendant.

#### **Unilateral Change, Hours of Work [3.22, 9.411, 9.413, 43.432, 72.5, 72.615, 72.65, 74.12, 74.32]**

School district violated section 39-31-401 (1) & (5) of Act by unilaterally changing employee’s work schedule from four 10 hour shifts to five 8 hour shifts without first bargaining. No reimbursements for extra daycare and travel expenses resulting from change are assessed, restoring 4-10 schedule is sole remedy, status quo ante.

#### **Union Activity, Discrimination [71.227, 72.321, 72.324, 72.340]**

School district did not violate section 39-31-401 (3). No proof was offered to show that district changed employee’s schedule from 4-10’s to 5-8’s because of her union activities.

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**ULP Charge No. 8-92**, Warm Springs Independent Union No. 5070, Montana Federation of State Employees, AFT, AFL-CIO, Appellants vs. Department of Corrections & Human Services, State of Montana, Respondent

Final Board Order issued December 11, 1992 – Board members Poore, Kapinos, Schneckloth, O’Neil and Klepper.

#### **Leave Cancellation, Employee Strike [01.1, 03.22, 09.413, 21.12, 43.153, 62.31, 62.525, 71.227, 71.512, 72.172.134, 72.311, 72.317, 72.323, 72.342, 72.358, 72.359]**

Montana State Hospital did not violate section 39-31-401 (1) & (3) of Act when it cancelled pre-approved leaves during employee strike for legitimate business reasons even though annual vacation leave is an accrued benefit. The language of Montana and Federal Acts are similar, if not identical, thus broad protection of Act allows for independent or derivative violations. Discrimination nor antiunion animus was demonstrated.

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**ULP Charge No. 31-92**, Sheila M. Murphy and Union of Maintenance Employees of Valley County School District #1-1A, Complainant vs. Board of Trustees of Valley County School District #1-1A, Defendant.

Final Board Order issued September 20, 1993 – Board members McKeon, Klepper, Henry, Talcott and Schneider.

Attorneys: David Erving for Complainant; Rick D’Hooge for Defendant.

**Refusal to Process Grievance, Authority of Hearing Officer [01.2, 03.3, 09.23, 11.51, 15.18, 21.13, 43.231, 43.73, 47.222, 47.7, 71.31, 72.71, 72.76]**

School district did not violate section 39-31-401 (1) & (5) of Act when it refused to process classified employee’s discharge grievance. Parties’ contract contained neither disciplinary nor grievance procedure, hearing officer refused to insert Montana Operations Manual grievance procedure into contract since parties had not voluntarily negotiated it.

**Motion to Vacate, Motion in Limine, Other Administrative Procedures [ 01.2, 09.3, 47.13, 47.32, 71.31, 71.513]**

Complainant employee cannot have ULP hearing vacated and defer to already held procedure under section 20-3-210, MCA, Defendant must have chance to be heard. Motion in limine is granted in part, denied in part, only material relevant to ULP case will be allowed into record.

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**ULP Charge No. 30-92, Great Falls Education Support Personnel Association, MEA/NEA, Complainant vs. Great Falls Public School Districts No. 1 & A, Defendant**

Final Board Order issued October 21, 1993 – Board members McKeon, Klepper, Henry, Talcott and Schneider.

Attorneys: J. Dennis Moreen for Complainant; Arlyn L. Plowman for Defendant.

**Refusal to Bargain, Tobacco Free Policy [01.1, 01.26, 03.3, 41.131, 42.1 43.472, 43.476, 71.7, 72.5, 72.6, 72.617, 72.663]**

Employer school district violated Act by refusing to bargain in good faith over implementation of tobacco free policy, a mandatory subject of bargaining, after impasse was declared. Effects of policy are also mandatory subject as material change in working conditions.

**Two-Tiered (Bifurcated) Bargaining [41.3, 41.476, 72.5, 72.6, 72.617]**

Employer school district acted illegally in requiring complainant union to bargain separately over tobacco free policy and its effects, mandatory subjects for collective bargaining, from the existing, ongoing negotiations.

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**ULP Charge No. 14-93, Florence-Carleton Classified Employees Association, MEA/NEA, Complainant, vs. Florence-Carlton High School and Elementary District No. 15-6, Ravalli County, Montana, Defendant.**

Final Board Order issued December 1, 1993 – Board members McKeon, Henry, Schneider, and Talcott.

Attorneys: Karl Englund for Complainant; Don Klepper, Ph.D. for Defendant.

**Transfer of Bargaining Unit Work [01.31, 15.172, 41.6, 42.11, 43.52, 46.65, 71.74, 72.5, 72.6, 72.613]**

School district violated section 39-31-401 (5) of Act, refusing to bargain in good faith, by unilaterally transferring bargaining unit work to newly created non-bargaining unit supervisory position. Transfer of work is mandatory subject of bargaining, employer failed to either notify union of transfer or to bargain over it.

**Discrimination, Union Activity [01.31, 09.378, 15.172, 41.6, 43.52, 72.3, 72.324]**

School district did not violate section 39-31-401 (1) by the reduction of employee's hours of work through illegal transfer of her bargaining unit work. Union offered no proof that reduction of hours was in retaliation for employee's extensive union activities.

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**ULP Charge No. 35-93**, International Union of Operating Engineers, Local 400, AFL-CIO, Complainant, vs. City of Cut Bank, Defendant.

Final Board Order issued December 1, 1993 – Board members McKeon, Schneider, Talcott, Henry and Hagan.

Attorneys: Karl Englund for Complainant; Selden Frisbee for Defendant.

**Unilateral Change, Personnel Policies [01.1, 04.2, 09.2, 21.4, 21.7, 41.63, 42.11, 43.47, 43.98, 71.11, 71.227, 72.51, 72.612, 72.613, 72.651, 72.665, 74.32]**

City violated section 39-31-401 (5) of Act by unilaterally (without bargaining with union) changing personnel policies affecting bargaining unit. Although city's defense was that new policy manual strictly enforced and memorialized existing practices, Board found substantial changes were made. Remedy is to rescind new policies.

**Direct Dealing, Policy Manual [01.1, 04.2, 09.2, 21.4, 21.7, 41.63, 42.11, 43.47, 43.98, 71.11, 71.227, 72.51, 72.55, 72.665]**

City violated Act by requiring bargaining unit members to deal directly with it over changes in personnel policies through demand that they sign for and pick up new policy manuals without presence of authorized representative. City offered to discuss new policies with union only after implementation.

**Harassing Employees, Discrimination [01.1, 43.47, 71.11, 71.227, 72.3, 72.318, 72.321]**

City did not violate 39-31-401 (3) of Act in implementing new policies. Policies applied to all city employees, not just union ones and did not either encourage or discourage union membership.

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**ULP Charge No. 3-94**, Missoula Elementary Assistants and Paraprofessionals, MEA/NEA, Complainant, vs. Missoula Elementary District #1, Defendant.

Final Board Order issued February 22, 1995 – Board members McKeon, Talcott, Henry, Schneider, and Hagan.

Attorneys: Karl Englund for Complainant; Don Klepper for Defendant.

**Reduction in Work Year, Failure to Bargain [09.2, 42.1, 43.444, 71.7, 71.73, 71.74, 72.6, 72.612, 72.662, 72.664]**

School district did not violate Act by unilaterally reducing the number of work days in school year for bargaining unit members. Unit members had previously reported two days prior to start of classes, redistribution of district funds necessitated change to one-half day which was authorized by parties' contract that allowed work year to be determined on job-by-job basis.

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**ULP Charge No. 5-94**, Florence-Carlton Classified Employees Association, MEA/NEA, Complainant, vs. Florence-Carlton Elementary and High School District 15-6, Defendant.

Final Board Order issued February 1995 – Board members McKeon, Schneider, Talcott, Henry and Hagan.

Attorneys: Karl Englund for Complainant; Don Klepper, Ph.D. and Maureen Lennon for Defendant.

**Subcontracting, Failure to Bargain [09.642, 09.65, 11.51, 15.172, 43.54, 43.95, 72.3521, 72.358, 72.613, 72.665, 74.335]**

School district violated sections 39-31-401 (1) & (5) of Act by subcontracting bargaining unit food service work without either prior notice or bargaining. District failed to meet conditions for subcontracting without first bargaining outlined in Yellowstone County, supra, ULP No. 9-83, union did not expressly waive its right to bargain. Remedy, although district ended subcontracting of services, is reinstatement of adversely affected unit members with full pay.

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**ULP No. 1-91**, [Cause No. ADV-93-1219, Montana First Judicial District Court] Frazer Education Association, MEA, NEA, Complainant/Defendant vs. Trustees of Frazer Elementary School District No. 2 and High School District No. 2B; Superintendent John Marlette, Defendant/Plaintiffs

Decision and Order of Court issued October 28, 1993 – Judge Dorothy McCarter

Final Order of Board issued July 5, 1995 – Board members McKeon, Hagan, Talcott, Foley and Schneider

Attorneys: Emilie Loring and John Addy for Complainant; Peter Maltese and Arlyn Plowman for Defendants; Melanie Symons for BOPA.

## **Exhaustion of Administrative Remedies [01.21, 03.3, 06.15, 09.63, 71.7, 71.74, 81.332]**

Court held that defendant school districts did not exhaust parties' administrative remedies prior to bringing matter to court. BOPA had remanded ULP decision back to hearing officer and no final decision had been rendered yet to make case ripe for judicial review and judicial economy dictates that entire case be brought back before court in future.

## **Unilateral Change, Impasse [51.01, 51.35, 52.01, 72.6, 72.612, 72.613, 72.63, 72.664]**

School district did not violate Act, sections 39-31-401 (1) & (5), by unilaterally lowering health insurance contributions after mediation session during which it became aware of overpayments. No impasse existed, district followed contract language listing contribution amount even though it had been paying more than that for 2 years.

## **Board Authority, Contract Language [01.1, 01.21, 01.27, 01.28, 09.2, 09.23, 09.25, 43.131, 46.4, 71.22, 71.31]**

Board declines to change contract language regarding employer school district health insurance contribution amount while parties are in midst of negotiations. Clear and unambiguous contract language cannot be changed by Board, although Board has jurisdiction to hear case initially.

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## **ULP Charge No. 10-94, Steve Winchester, Complainant vs. Mountain Line – Mary Plumley, Defendant.**

Final Board Order issued October 2, 1995 – Board members McKeon, Schneider, Talcott, Hagan and Henry. Attorneys: Richard R. Buley for Complainant; Margaret L. Sanner for Defendant.

## **Deferral to Arbitration, Collyer Doctrine [01.25, 09.231, 21.5, 43.23, 43.73, 43.99, 47.54, 71.7, 71.8, 71.81, 71.82, 72.3, 72.324, 72.334, 72.341, 81.3]**

Allegation that city suspended then discharged employee for union activities and role as union shop steward is dismissed as ULP. Deferral to arbitration for contract violation is proper under Collyer Doctrine and Converse, supra, ULP No. 44-81. Contract contained anti-discrimination clause for union activities.

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## **ULP Charge No. 61-94, Smith Valley Teachers Association, MEA/NEA, Complainant/Appellant, vs. Smith Valley Elementary School District No. 89, Flathead County, Defendant/Respondent.**

Final Board Order issued December 15, 1995 – Board members McKeon, Schneider, Foley, Talcott, and Hagan.

Attorneys: Karl Englund for Complainant; Michael Dahlem for Defendant.

## **Surface Bargaining, Refusal to Bargain in Good Faith [01.2, 11.51, 15.121, 41.63, 42.1, 43.120, 51.01, 51.31, 71.7, 71.7, 72.5, 72.586, 74.31, 74.32]**

Board overturned hearing officer's decision and found school district had violated sections 39-31-401 (1) & (5) of Act by practicing surface bargaining and refusing to bargain in good faith with union. Since impasse conditions did not exist at time charges were filed, precedent set by Supreme Court in Forsyth, supra, is controlling. Remedy is two fold; district is ordered to bargain with union, and it is also ordered to give back pay to teachers under terms of expired contract.

**Authority of Hearing Officer, Authority of Board [01.2, 01.21, 01.31, 71.7, 71.72, 71.74]**

Board rules that no case precedent exists to justify hearing officer overturning Board in Forsyth or in any other case. In fact, hearing officer is bound by Board precedent.

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**ULP Charges Nos. 11, 12, 13, 14, 15 & 16-94**, William M. Buhl, Serge Myers, and James A. Gress, Complainants, vs. IUOE Local 400 and Montana Department of Corrections and Human Services, Defendants.

Final Board Order issued March 3, 1997 – Board members Rice, Talcott, Hagan, Perkins and Schneider.

Attorneys: James P. Lippert for Complaints; Vivian V. Hammill and Peter Michael Meloy for Defendants.

**Layoffs, Refusal to Bargain [09.231, 21.4, 34.37, 43.95, 47.22, 71.229, 72.316, 72.5, 72.71]**

State department as employer did not violate Act by laying off 3 hospital employees. It did not discriminate against 3 by acquiescing to union determination of seniority status of 2 bargaining units for purpose of layoff. Vaca test of employer liability based upon union's breach of duty of representation and conspiracy is used.

**Layoffs, Duty of Fair Representation [09.231, 21.7, 23.2, 23.24, 34.37, 47.21, 47.31, 71.229, 73.113, 73.51]**

Union did not violate Act nor breach its duty of fair representation to 3 laid off hospital employees. After extensive investigations, retention of attorney, assistance of mediator and meetings with employer over interpretation and application of contract's seniority and lay off provisions, Board found that union did not arbitrarily ignore grievances nor perfunctorily process them. Union did not take 3 employees' grievances to arbitration.

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**ULP Charge No. 32-98**, Frenchtown Public Schools, District No. 40, Complainant, vs. Frenchtown Education Association, MEA/NEA, Defendant.

Final Board Order issued December 29, 1998 – Board members Rice, Schneider, Talcott, Hagan and Perkins.

Attorneys: Don Klepper, Ph.D. for Complainant; Karl Englund for Defendant.

**Refusal to Bargain, Refusal to Abide by Contract [01.26, 03.22, 09.231, 11.51, 41.63, 42.42, 43.98, 46.11, 46.641, 71.227, 71.7, 71.813, 73.4]**

Board agent properly dismissed charge filed by school district against teacher union alleging union's refusal to abide by contract language. Contract doesn't allow for employer grievances so case is properly before Board. Board agreed with agent that parties had already met and resolved issue in ULP case before filing of charges, the Act contemplates day to day adjustments in contract interpretation.

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**ULP Charge No. 18-98**, Frenchtown Public Schools, District No. 40, Complainant vs. Frenchtown Education Association, MEA/NEA, Defendant.

Final Board Order issued December 29, 1998 – Board members Rice, Schneider, Perkins, Talcott and Hagan.

Attorneys: Don Klepper, Ph.D. for Complainant; Karl Englund for Defendant.

**Bad Faith Bargaining, Filing Grievances & ULP Charges [03.22, 09.25, 09.62, 09.63, 09.64, 11.51, 15.121, 21.2, 21.9, 43.78, 46.11, 71.227, 73.1142, 81.112]**

Board affirms Board agent's dismissal of charge filed by school district against teacher union alleging that it had bargained in bad faith by grieving contract language through past practice argument and by filing ULP charge under contractual election of remedies clause. Filing grievances and ULP charges by exclusive representative are protected activities under section 39-31-201, MCA.

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**ULP Charge No. 6-98**, Polson Classified Employees' Association, MEA/NEA, Complainant vs. Polson Public Schools, Elementary & High School District No. 23, Lake County, Montana, Respondent.

Final Board Order issued December 17, 1999 – Board members Holstrom, Talcott, Schneider, Doney and Perkins.

Attorneys: Karl Englund for Complainant; Arlyn Plowman for Respondent.

**Refusal to Bargain in Good Faith, Waiver [01.27, 09.25, 09.64, 11.51, 15.14, 21.4, 34.32, 42.1, 43.41, 43.422, 71.227, 71.7, 71.74, 72.5, 72.55, 72.590, 72.664]**

After Board remanded case back to hearing officer with certain stipulations, hearing officer found and Board then affirmed that school district did not violate section 39-31-401 (1) & (5) by refusing to bargain in good faith by unilaterally changing job descriptions and bypassing the exclusive representative by directly bargaining with unit members. School district properly and lawfully discontinued and combined job descriptions within unit, parties' contract contained specific waiver of union bargaining rights over job descriptions and duties.

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**ULP Charge No. 24-97**, Culbertson Education Association, MEA/NEA, Complainant vs. Culbertson Public School Board of Trustees, Defendant.

Final Board Order issued March 23, 1999 – Board members Rice, Schneider, Vagner, Talcott and Perkins.

Attorneys: Karl Englund for Complainant; Arlyn Plowman for Defendant.

**Bad Faith Bargaining, Board Authority [01.2, 01.21, 09.3, 11.51, 15.121, 42.1, 43.120, 43.615, 46.11, 71.227, 71.73, 71.74, 72.52]**

Board overrules hearing officer and finds that school district did not violate Act by taking firm position on proposed raises for teachers by its insistence on removal of extra-curricular activity index from contract salary schedule and by offering one year proposal containing less of a raise than previous multi-year one. Overruling is based on lack of substantial evidence.

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**ULP Charge No. 31-99, Montana Public Employees Association & Fish, Wildlife & Parks Game Wardens Bargaining Unit, Complainants vs. Montana Department of Fish, Wildlife & Parks, Defendant.**

Final Board Order issued October 25, 1999 – Board members Rice, Vagner, Talcott, Perkins and Dwyer.

Attorneys: Carter Picotte for Complainants; Vivian V. Hammill for Defendant.

**Standing [11.21, 22.2, 42.41, 71.21, 71.14, 71.227]**

Board affirms Board agent's dismissal of charges against state department. Union did not represent positions it considered "sham" for doing some bargaining unit work at time charges were filed. Parties had already set date in near future for negotiations.

**Discrimination, Refusal to Bargain, Prospective Argument [11.21, 21.4, 71.21, 71.227, 72.1, 72.3, 72.5]**

Board affirms Board agent's dismissal of charges against state department. Union made prospective argument in charges alleging refusal and failure to bargain, restraint and coercion over "sham" conservation specialist positions. Union had not yet requested bargaining over these positions but was making prospective argument about potential violation of Act in future.

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**ULP Charge No. 34-98, Jordan Education Association, MEA, NEA, Complainant/Appellant vs. Jordan Unified School District, Defendant/Respondent**

Final Board Order issued February 1, 2000 – Board members Holstrom, Schneider, Talcott, Doney and Perkins present.

Attorneys: Karl Englund for Complainant; Michael Dahlem for Defendant

**Surface Bargaining, Pay Proposal [43.11, 72.53, 72.535, 74.31, 81.504]**



School district violated section 39-31-401 (5) of Act when it expressed disinclination to bargain during ongoing litigation with union and made unsubstantiated statements about availability of money for teacher pay raises during bargaining at the same time it made proposal to reduce attainment levels negating pay raises. Board reversed hearing officer and issued substitute discussion and conclusion of law.

**Failure to Bargain, Elimination of Position [71.227, 72.5, 72.666]**

School district did not violate Act when it eliminated PE/Health position that had effect of reducing teacher preparation time. It gave union adequate notice and union failed to timely request negotiations over effects of program elimination.

**Misrepresentation [71.227, 72.535]**

School district did not violate Act when it told union it could not afford union's wage and benefit proposals. District did not misrepresent its budget which was public document and available, it chose not to devote more of budget to teacher pay raises.

**UNIT CLARIFICATION CASES**

**UC No. 3-91**, Missoula Elementary Secretary's Classified Association, MEA/NEA, Petitioner, vs. Missoula School District No. 1, Respondent.

Final Board Order issued April 8, 1992 – Board Chairman Poore.

Attorneys: Emilie Loring for Petitioner; Dom Klepper, Ph.D. for Respondent.

**Appropriate Bargaining Unit [11.51, 15.14, 15.18, 34.32, 36.114, 36.121]**

Board upholds hearing officer's ruling that denies transfer of art aide position from one unit to another. No community of interest nor prior bargaining arguments are made by petitioner, only employee's desire to be included on higher paying matrix.

**Exclusion from Bargaining Unit, Confidential Employee [11.51, 15.18, 21.3, 36.114]**

Board upholds hearing officer's ruling that position does not meet confidential employees criteria in Act and therefore should be included in appropriate bargaining unit. Respondent attempted to expand "confidential" beyond parameters set by Board precedent.

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**UC No. 14-92**, Labor Relations Bureau, State Personnel Division, Petitioner vs. Labor Relations & Appeals Union, Department of Labor & Industry, Respondent.

Final Board Order issued December 11, 1992 – Board members Poore, Kapinos, Schneckloth, O'Neil and Klepper.

Attorneys/Representatives: Steve Johnson for Petitioner; Stan Gerke for Respondent.

**Appropriate Bargaining Unit [11.21, 11.32, 15.31, 34.43, 36.114, 36.121, 36.122, 36.33]**

Employer files petition because it believes the bargaining unit is not adequately or accurately defined since department's structure has changed drastically since original certification in 1979. Board defines and determines unit make up reflecting current situation and parties' arguments about appropriate unit.

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**UC No. 8-94 {Cause No. CDV-96-1472}**, City of Great Falls, Great Falls, Montana Petitioner vs. International Association of Firefighters Local No. 8 Respondent.

Final Board Order issued November 20, 1996 – Board members Rice, Schneider, Henry, Hagan, and Talcott.

Order and Judgment on Petition for Judicial Review issued December 30, 2000 – Judge Marge Johnson, Eighth Judicial District Court.

Attorneys: David Gliko for Petitioner; Timothy McKittrick for Respondent.

**Supervisory Employee, Fire Battalion Chiefs [01.24, 03.4, 06.15, 09.231, 09.31, 11.23, 15.43, 16.31, 21.3, 36.114, 36.121, 81.332]**

District Court affirms Board ruling on continuing inclusion of fire department battalion chiefs in fire fighter bargaining unit. Although Board finds that battalion chiefs are supervisory employees under 39-31-103 (11), they share community of interest, common wages, hours, benefits, supervision with rest of bargaining unit. Board and Court are reluctant to disturb longstanding units "grand fathered" by 39-31-109 of Act, no showing of actual substantial conflict by inclusion of BC's was made by petitioner.

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**UC No. 12-97**, State Labor Relations/Department of Transportation, Petitioner vs. Montana Public Employees Association, Respondent.

Final Board Order issued July 11, 1997 – Board members Rice, Talcott, Hagan, Perkins and Foley.

Attorneys/Representatives: Paula Stoll for Petitioner; Jim Adams for Respondent.

**Supervisory Employee [03.22, 11.21, 15.01, 16.31, 16.32, 36.114, 36.115, 36.121]**

Board rules that respondent did not file timely exceptions and upholds hearing officer's ruling that accounting technician position be removed from bargaining unit due to meeting primary and secondary supervisory tests based on Board precedent and statutory law.

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**UC No. 2-97**, Yellowstone County, State of Montana, Petitioner vs. Montana Public Employees Association Respondent.

Final Board Order issued January 22, 1998 – Board members Rice, Talcott, Hagan, Perkins and Foley.

Attorneys: Brent Brooks for Petitioner; Carter Picotte for Respondent.

**Supervisory Employees [03.2, 11.22, 15.01, 16.31, 16.32, 36.114, 36.121]**

Board upholds hearing officer's decision that four county employees are supervisors and thus removed from courthouse unit. Four positions meet primary considerations including hiring, direction and assignment of subordinates, ability to discipline and secondary indicia based upon statutory and case law precedents.

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**UC No. 4-96**, State of Montana Department of Public Health and Human Services, Montana Developmental Center, Petitioner vs. AFSCME Local 971 Montana Developmental Center, American Federation of State, County & Municipal Employees, AFL-CIO, Respondent.

Final Board Order issued January 22, 1998 – Board members Rice, Talcott, Hagan, Perkins, and Schneider.

Attorneys: Vivian Hammill for Petitioner; Patrick McKittrick for Respondent.

**Supervisory Employees [03.2, 11.21, 15.01, 15.233, 15.251, 16.31, 16.32, 36.114, 36.121, 36.34]**

Board denies union petition for reconsideration of Board's upholding of hearing officer's ruling that 4 food service supervisor and 24 cottage shift manager positions are supervisory. Positions in question meet several supervisory criteria for 39-31-103 (11) including recommending hiring and firing, directing, assigning and disciplining employees, therefore Board upholds their removal from unit.